ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2013-01

January 11, 2013

EDMONTON POLICE SERVICE

Case File Number F5589

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Summary: It had been the policy of the Edmonton Police Service ("the Public Body") to post copies of disciplinary decisions involving its members on its website. When the Public Body discontinued this practice, the Applicant made an ongoing request of the Public Body for copies of disciplinary decisions beginning from the time that the Public Body stopped posting the decisions on its website. The Public Body responded to the Applicant, severing a large portion of the requested records in accordance with section 17 of the *Freedom of Information and Protection of Privacy Act* ("the Act").

The Adjudicator found that in its decision as to whether to withhold or disclose the records responsive to the request, the Public Body had not taken into account all the factors that are relevant to the question, most notably the factor that the disciplinary decisions in this inquiry were read aloud, publicly, at the conclusion of the hearings. She asked the Public Body to reconsider its decision taking all relevant factors into account.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, and 72; *Police Act*, R.S.A. 2000, c. P-17; *Police Service Regulation*, Alta. Reg. 356/1990 and Amendments s. 16; *Freedom of Information and Protection of Privacy Act* R.S.B.C. 1996, c. 165, s. 22(2).

Authorities Cited: AB: Orders F2000-023, F2001-020, F2004-015, F2008-009, F2008-017, F2008-020, F2008-022, F2009-044, F2010-029, and F2010-029; **B.C.:** Order F12-10.

Cases Cited: *R. v. Hoeving*, 2008 ABQB 479; *Calgary Police Service v. Alberta (Information and Privacy Commissioner)*, 2010 ABQB 82.

I. BACKGROUND

[para 1] Prior to February 1, 2010, it was the practice of the Edmonton Police Service ("the Public Body" of "EPS") to post disciplinary decisions regarding EPS members on its website. After that date, in a letter to the Public Body dated August 9, 2010, the Applicant made a continuing request, pursuant to the *Freedom of Information and Protection of Privacy Act* ("the Act"), for:

1. Public notices of police disciplinary proceedings for the weeks preceding August 2, 2010 since the Edmonton Police Service took down the information from its website;

2. Notice and Record of Disciplinary Proceedings for all discipline hearings since the Edmonton Police Service took down the disciplinary decisions from its website;

3. All written decisions by Presiding Officers, both interlocutory and final, since the Edmonton Police Service took down the information from its website;

4. Where written decisions do not exist and if a transcript exists of the decision then copies of the transcripts of the decisions;

5. Where there are no written decisions or transcripts in existence of the same, then a copy of the CD of the audio of the oral interlocutory and final decisions.

[para 2] On September 16 and 22, 2010, the Applicant e-mailed the Public Body and requested information regarding two specific matters involving Edmonton Police Service members ("EPS members"). These specific requests were added to the Applicant's existing request.

[para 3] The last decision posted by the Public Body on its website was February 1, 2010; therefore, the Public Body searched for all responsive records from that date on. On September 23, 2010, the Public Body responded to the Applicant's request by providing the Applicant with severed copies of hearing notices and one disciplinary decision; however, the Public Body withheld all of the other disciplinary decisions in their entirety pursuant to section 17 of the Act. As a result, the Applicant wrote to the Office of the Information and Privacy Commissioner ("this Office") and requested a review of the Public Body's response. The matter was referred directly for an inquiry.

[para 4] In the course of preparing this matter for inquiry, it was determined that several of the EPS members whose personal information is found in the responsive records ought to be named as Affected Parties. Five of these EPS members participated in this inquiry; providing initial and rebuttal submissions. As their positions are

essentially the same I will refer to them collectively as "the Affected Parties". I also received initial and rebuttal submissions from the Applicant and initial submissions from the Public Body.

II. INFORMATION AT ISSUE

[para 5] The information at issue is the severed portions of the responsive records sent to the Applicant September 23, 2010, and the responsive records that were withheld in their entirety.

III. ISSUES

[para 6] The Notice of Inquiry dated October 26, 201,1 identified one issue in this inquiry:

> Does section 17 of the Act (disclosure harmful to personal privacy) apply to the records/information?

IV. DISCUSSION OF ISSUES

A. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the records/information?

i. Was the severed information personal information?

[para 7] Section 1(n) of the Act defines personal information as follows:

> *1(n) "personal information" means recorded information about an identifiable individual, including*
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> > *(i) the individual's name, home or business address or home or business telephone number,*
> >
> > *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
> >
> > *(iii) the individual's age, sex, marital status or family status,*
> >
> > *(iv) an identifying number, symbol or other particular assigned to the individual,*
> >
> > *(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
> >
> > *(vi) information about the individual's health and health care history, including information about a physical or mental*

disability,

(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else;

[para 8] The information that was severed from the responsive records includes the content of the disciplinary decisions, third parties' names, ages, sex, marital status, health care history, employment history, and opinions about them. Therefore, I find that the information severed was personal information of third parties.

ii. Would disclosure of the third party personal information be an unreasonable invasion of the third parties' personal privacy?

[para 9] Section 17(1) of the Act states:

17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[para 10] Section 17(2) of the Act defines circumstances where the disclosure of a third party's personal information will not be an unreasonable invasion of the third party's personal privacy. None of these circumstances apply in this inquiry.

[para 11] Section 17(4) of the Act details circumstances where the disclosure of a third party's personal information is presumed to be an unreasonable invasion of the third party's personal privacy. The portions of section 17(4) of the Act that are relevant to this inquiry state:

17(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

…

(d) the personal information relates to employment or educational history,

> ...
>
> *(g) the personal information consists of the third party's name when*
>
> > *(i) it appears with other personal information about the third party, or*
> >
> > *(ii) the disclosure of the name itself would reveal personal information about the third party,*
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> ...

[para 12] There is medical information about the EPS members as well as other third parties scattered throughout the responsive records. The disclosure of this information is presumed to be an unreasonable invasion of a third party's personal privacy by reference to section 17(4)(a). However, most of the information that was severed was not medical information.

[para 13] The information that the Applicant requested are records of disciplinary hearings and decisions involving EPS members accused of breaching the *Police Service Regulation*.

[para 14] The information severed is personal information that relates to the EPS members' employment history; therefore a presumption arises under section 17(4)(d) of the Act that the disclosure of the information would be an unreasonable invasion of the EPS members' personal privacy. Past orders issued by this Office have found that disciplinary records were part of a police officer's "employment history" (see Order F2008-020 at paras 38-39 and Order F2009-044 at paras 29-30). As well, in Order F2008-009, the Adjudicator found that disciplinary decisions were part of a third party police officer's employment history and thus subject to section 17(4)(d) of the Act. Although this order was overturned by the Court of Queen's Bench in *Calgary Police Service v. Alberta (Information and Privacy Commissioner)* ("CPS decision"), the Court did not disagree with the application of section 17(4)(d) of the Act to the records.

[para 15] Therefore, I find that section 17(4)(d) of the Act applies to all the information severed from the responsive records. I also find that section 17(4)(g)(i) of the Act (name together with personal information) applies to the information in the records. As a result, there is a presumption that disclosing the information would be an unreasonable invasion of the EPS members' personal privacy.

iii. Are there any section 17(5) factors that weigh in favour of disclosure?

[para 16] Although I have found that sections 17(4)(d) and 17(4)(g)(i) of the Act create a presumption that the disclosure of the information severed from the responsive records would be an unreasonable invasion of the EPS members' personal privacy, it is still

necessary to examine the factors set out in section 17(5) of the Act to determine if there are any overriding factors weighing in favour of disclosure.

[para 17] The potentially relevant parts of section 17(5) of the Act state:

> *17(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*
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> > *(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*
> >
> > *…*
> >
> > *(e) the third party will be exposed unfairly to financial or other harm,*
> >
> > *…*
> >
> > *(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and*
> >
> > *…*

[para 18] The Applicant submits that section 17(5)(a) of the Act (disclosure desirable for public scrutiny) is applicable and weighs in favour of disclosing the severed information. The Public Body and Affected Parties argue that disclosure may unfairly damage the reputation of third parties referred to in the records (namely the EPS members involved) and that section 17(5)(h) of the Act (damage to reputation) weighs in favour of withholding the information. The Affected Parties provided affidavit evidence that they felt that disclosing the information to the Applicant could cause damage to their reputations and careers as well as cause them financial harm (section 17(5)(e)).

a. Public scrutiny:

[para 19] Several orders issued by this Office have found that the desirability of subjecting the actions of a police service to public scrutiny overrode the presumptions against disclosure in section 17(4) of the Act, as well as any possible reputational harm. In those orders, the public body was found to have properly disclosed information from internal affairs investigations and disciplinary hearings and to have properly severed the names of the individual police officers and other third parties (see Order F2008-017 for example). In the view of the adjudicators issuing these decisions, this approach balanced the officers' right to be protected against an unreasonable invasion of their personal

privacy and guard against possible damage to the officers' reputation, with the desirability for public scrutiny of the disciplinary processes of the public bodies.

[para 20] One such order was Order F2008-009, in which a request was made to the Calgary Police Service for access to disciplinary decisions. The Adjudicator in that case had found that the desirability for public scrutiny of the public body's decision outweighed the factors that weighed against disclosure. He ordered the Calgary Police Service to release the disciplinary decisions but, in some instances, to sever the names of the police officers.

[para 21] The Calgary Police Service asked the Court of Queen's Bench to judicially review the order. The Court overturned the Adjudicator's order in *Calgary Police Service v. Alberta (Information and Privacy Commissioner)* and found that, except where the decisions involve or result from federal or provincial offences, disclosure of the decisions would be an unreasonable invasion of police officers' personal privacy, and that this presumption is not overridden by section 17(5)(a) of the Act. The Court's reasoning was that the desirability of public scrutiny of the disciplinary process was already fully addressed by representation from the public on the Law Enforcement Review Board ("LERB") and the Calgary Police Commission.

[para 22] The Court went on to decide that in cases where there is an alleged provincial or federal offence which the Chief of Police has referred to the Minister of Justice and Attorney General and a charge has resulted, disclosure of any subsequent disciplinary decision relating to the officer so charged ought to be ordered, but this is limited to the officer's name, rank, and the nature of the charge. The Court found that although there may be some harm to the officer's reputation, it is no more than any other person who has been charged with an offence. The Court went on to state (at para 101):

> Once a charge has been laid, the transparency of the justice system prevails. Public confidence in the system requires no less. Thus our open courts permit public scrutiny of the entire proceedings, subject only to court ordered restrictions on publication or access. The desirability for public scrutiny has been satisfied. For that reason, the disciplinary decision disclosure can be limited to the name and rank of the officer involved, and the nature of the charge.

[para 23] Despite the absence of any LERB involvement for matters that are referred to the Minister and result in charges, the Court found the desirability of public scrutiny in cases involving federal or provincial offences is satisfied by the transparency of our judicial system. The Court also found, at para 101, that:

> For similar reasons, disciplinary decisions that result from such charges such as dismissal, suspension from duty or loss of rank must be disclosed, again limited to the nature of the charge, name, rank and the sanction imposed. That is so in order that the public can make its own judgment as to the appropriateness of the employment sanctions.

[para 24] In the Court's view, for cases before it in which disciplinary hearings arose from charges involving federal or provincial offences, the name, rank, nature of the charge and sanction imposed is all of the information that needed to be disclosed.

[para 25] All of the parties made submissions regarding the applicability of the CPS decision to this inquiry. The Applicant argues that the CPS decision is distinguishable from this inquiry on its facts.

[para 26] In particular, the Applicant argues that the CPS decision does not apply because unlike the information requested in the CPS decision, the Applicant's request in this matter was for decisions that were read orally, verbatim from the written decision, in public, following a public hearing. The Applicant points out that the CPS decision is silent on whether all but one of the decisions in that case were as the result of public hearings. The Applicant also argues that the hearings in the CPS decision were not the subject of any media coverage in contrast to some of the hearings in the present case. He inferred this from the fact that it was a newspaper that made the access request to the Calgary Police Service.

[para 27] In its review, the Court in the CPS decision focused on what it regarded as the "heart" of the Adjudicator's order – the applicability of section 17(5)(a) of the Act. The Court stated,(at paras 29-31):

> In respect of Section 17(5)(a) - the desirability of public scrutiny relied upon by the Herald, the Commissioner concluded that paragraph 74:
>
> > Given all of the foregoing, I find that the Applicant has established that the disclosure of the personal information of third parties in the records at issue is desirable for the purpose of subjecting the activities of the Public Body to public scrutiny, under section 17(5)(a) of the Act. This accordingly weighs in favour of disclosing the personal information on the basis that it would not be an unreasonable invasion of personal privacy.
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> Later, at para. 84, the Commissioner also said:
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> > I find that the Applicant has established that the desirability of public scrutiny outweighs the factors that suggest that the personal information of the cited officers should not be disclosed in this inquiry (although I make some exceptions below). Where there has been alleged criminal misconduct and/or a formal hearing (even if the latter did not involve alleged criminal misconduct), disclosure of matters involving both founded and unfounded allegations are warranted in order to scrutinize the conduct of individual officers, the Public Body's processes and the soundness of its decisions. In other words, I find that the decisions should be disclosed because it is desirable to subject both the conduct of individual officers and the disciplinary process itself to public scrutiny.
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> This then is the heart of the Commissioner's decision and represents both the rationale offered by the Herald and the grounds for the judicial review argued by the CPS.

[para 28] As well, in the CPS decision, with regard to media coverage, the Court said, (at para 95):

> With respect, the Commissioner seems to have wrongly concluded that absent public scrutiny via the media, there is necessarily inadequate public scrutiny.

[para 29] Later in the decision, the Court commented on the potential for the public to learn of the complaint as an additional opportunity for public scrutiny, as follows (at para 102):

> It should be noted that any citizen complainant can disclose his or her complaint publicly at any time. Public scrutiny would no doubt result, depending upon the seriousness of the complaint and the credibility of the complainant. In this respect, the media plays an important public oversight role regarding police services. There are no disciplinary decisions during the investigative stage of a complaint which would be within the purview of this application. Nevertheless, when a complainant goes public - and some may for good reason not wish to - there is a level of public scrutiny during the investigation in addition to the safe-guards provided in the *Police Act* and the PSR.

[para 30] It can be seen from these comments that the applicability of section 17(5)(a) of the Act (the desirability of public scrutiny) – which constituted the "grounds for the judicial review" – was the deciding factor in the case in the Court's view.

[para 31] In so far as the applicability of section 17(5)(a) of the Act is concerned, I believe that the CPS decision is directly on point and that section 17(5)(a) of the Act does not weigh in favour of disclosure of the records at issue.

b. Public disclosure of disciplinary decision:

[para 32] While the CPS decision clearly has some relevance in this case, I believe there is an additional factor relevant to the decision I must make that were either not true of the cases considered by the Court in the CPS decision or possibly that do not appear to have been brought to the Court's attention.

[para 33] Notably, there is no indication in the CPS decision that the disciplinary decisions were read aloud at the conclusion of a public hearing. Previous orders issued by this Office have found that verbally disclosing the content of a written record is a disclosure under the Act (see Order F2008-022 at para 11). Therefore, by reading the disciplinary decisions out at the conclusion of a public hearing, the Public Body disclosed those decisions to any member of the public who was present as well as to any members of the media who may have been present, who may then have disseminated this information further.

[para 34] With the exception of one of the decisions considered in the CPS decision (which the Court referred to as having been public), I do not know if the disciplinary hearings were held in public (I do know that one of them was). I also do not know whether the disciplinary decisions were or were not read aloud in public.

[para 35] If none of the disciplinary decisions referred to in the CPS decision were read aloud in public, this would raise what is in my view a significant distinction between the present circumstances and those considered by the Court in the CPS decision. The degree to which privacy is infringed by disclosure of information is different when that information has been disclosed by the Public Body in a forum to which the public has access and in which the full details of the information have already been openly discussed. It seems fair to assume that for at least some public hearings, some members of the public or even the media would have been present, and some of the information would have been disseminated beyond the hearing room. It makes less sense to regard as privacy invasive the disclosure of information that has already been disclosed to the public by the Public Body.

[para 36] I am supported in this view by a recent decision of the Office of the Information and Privacy Commissioner for British Columbia. In Order F12-10, the adjudicator found (at para 44) that a prior disclosure by a public body of information sought through an access request is a factor that overrides the presumption that disclosure of the information would be an unreasonable invasion of a third party's personal privacy. When discussing relevant circumstances to consider under section 22(2) of British Columbia's *Freedom of Information and Protection of Privacy Act* (the equivalent of section 17(5) of Alberta's Act), the Adjudicator stated:

> Another relevant circumstance is that the College has already publicly disclosed some of the information at issue. This is a relevant circumstances *(sic)* weighing in favour of disclosure with respect to information of the kind already disclosed. This information includes disciplinary information about the physician and the fact that he kissed and hugged the patient. I have already mentioned this circumstance in reference to the application of s. 22(2)(a) of FIPPA above [public scrutiny]. It is also relevant on its own for the following reason. I have already found that the name of the physician is subject to s. 22(4)(c) of FIPPA and that s. 22(1) cannot apply to it. If I had concluded differently on that issue, the fact that the College disclosed the physician's name in the public notification would argue in favour of disclosing it in the Agreement as well.

[para 37] I agree with the Adjudicator in B.C. Order F12-10. In my view, the prior public disclosure of the content of the disciplinary decisions in this case, by way of reading them out in public, is a factor, separate from section 17(5)(a) (public scrutiny), that weighs in favour of disclosing the information, because it is less privacy invasive to disclose material that is already in the public realm.

[para 38] As well, the decision of another Justice of the Court of Queen's Bench has expressed the principle that when police disciplinary hearings are held in public, there is no expectation of privacy. In *R. v. Hoeving*, 2008 ABQB 479, the Court said (at paras 25 to 30):

> Professor Paciocco states his view as to what the law concerning disclosure of statutory disciplinary records should be:

> In the end, this question, too, is a nuanced one. As a matter of principle, the regime that should be applied to records collected or generated as part of statutory disciplinary initiatives should depend ultimately on the nature that investigation takes. Under police disciplinary legislation, different procedures can be used, depending on the seriousness of the allegation. At times, internal disciplinary proceedings are conducted while at other times public hearings are held. Where legislation provides for internal disciplinary proceedings it is difficult to deny that they generate what are, in a real sense, "employment records" since the hearings are solely for the purpose of employment-based discipline. Where public hearings are going to be held, however, there is a statutorily recognized public interest in access to information. Even where information is not presented during public hearings, thereby clearly losing any pretense to a private character, if it has been gathered for a public disciplinary hearing it should carry no reasonable expectation of privacy for the same reason that criminal investigation occurrence reports do not; the officer has no right to control what information is ultimately revealed and therefore can have no expectation that it will remain private. ... If information is generated under circumstances where its publication is expected, there can be no reasonable expectation of privacy.
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> …
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> The complaints process in Alberta, therefore, provides considerable protection against unwarranted damage to a police officer's reputation by not requiring that the process be conducted in public until at least the hearing stage.
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> In my view, as Professor Paciocco suggests, the statutory process provides a reasonable and practical test for determining, in an application of the type now before me, *whether a police officer has a privacy interest in the relevant disciplinary materials. The answer should depend on whether the disciplinary proceeding in question was conducted in private or in public,* assuming, of course, that the provisions of the legislation governing whether or not the process is conducted in public or in private have been respected.[emphasis added] ...

[para 39] In my view, though this case related to disclosure for the purpose of a criminal defence, the principle of whether the officer's privacy interest is maintained when a public disciplinary hearing is held carries over into the circumstances of an access request and, in particular, the circumstances of this inquiry, in which the written decisions sought were read, out loud, verbatim at the conclusion of a public hearing.

c. Legislative changes:

[para 40] Finally, as argued by the Applicant, section 16 of the *Police Service Regulation* has recently been amended to require written decisions flowing from public hearings to be made publicly available. Section 16(5) of the *Police Service Regulation* now states:

> *16(5) Where a hearing or a portion of a hearing is held in public, the written decision or the portion of it arising from the public hearing shall be made publicly available.*

[para 41] It is clear that at the time of the CPS decision the Court did not have the benefit of this legislative pronouncement and the articulation of the legislative principle that underlies it – that where hearings are held in public the resulting written decisions are to be made public.

[para 42] This legislative change was not in force at the time of the Applicant's access request and therefore, I cannot use the legislative change as a ground for finding that the Public Body ought to disclose the information that it is now required to make public under section 16 of the *Police Service Regulation*. There could have been any number of reasons why the legislature decided to amend the *Police Service Regulation*, I cannot assume that the amendment was, as the Applicant argues, "signifying the government's view of the privacy interests at play here." The change certainly reflects that from the point of the amendment forward, it is the Government's view that decisions resulting from public hearings shall be publically available and, perhaps, its view on the appropriate balance between the privacy interests of the subjects of such records and any competing interests. However, it cannot be said that the change is an articulation that the Government always regarded this to be the proper outcome.

d. *Applicability of the CPS decision:*

[para 43] As already noted, in my view the CPS decision rests primarily on the Court`s view that public scrutiny of the full content of disciplinary decisions which relate to offence convictions is unnecessary because public scrutiny is achieved by the offence proceedings together with public participation in the disciplinary process, as well as by disclosure of the disciplinary penalty. The Court's rationale did not include the considerations discussed above, for reasons that I am unable to discern because the Court did not discuss them as potential factors (though, as noted, it may have discounted them for reasons particular to the circumstances before it). As noted, I regard these factors to be significant as weighing in favour of disclosure in the present circumstances.

[para 44] I also note that the Court began its review of Order F2008-009 by stating that the Adjudicator's, "…'one answer fits all' approach is not reasonable." (at para 89). I take from this that the Court in the CPS decision would not approve of its own decision being understood as giving a set answer to matters involving access to police disciplinary records. Rather, it would see it as necessary that each request for police disciplinary records should take into account whatever factors particular to the case are relevant to whether the records or parts of them should be disclosed. Similarly, should a party ask to have a public body's response to these access requests reviewed by this Office, each review must be looked at on a case-by-case basis. Nothing in the CPS decision should be taken to fetter the discretion of either the head of a public body or this Office. I believe to interpret this decision otherwise would be to do exactly what the Court said the Adjudicator in Order F2008-009 was wrong to do.

[para 45] In my view, therefore, it was open to the Public Body in this case to make its decision taking into account relevant factors additional to the 'necessity for public scrutiny' factor on which the Court in the CPS decision focused.

[para 46] As the Adjudicator noted recently in Order F2012-24, in reviewing the decisions of public bodies, there are circumstances in which it is preferable to allow a public body to perform its duty under section 17(5) to take all relevant factors into account, rather than for the adjudicator to make the decision him or herself at first instance. She stated (at para 37):

> The primary reason for this is that all the factors that the Public Body says in its submission that it applied in this case by reference to section 17(5) were factors that weighed against disclosure, whereas I believe that there are two significant factors, which I will discuss below, that apply in favour of disclosure of the information that has not yet been disclosed. In my view, a decision that applies factors with this relative degree of significance should be made at first instance by the body that has the primary duty under the Act to make it. In effect, the Public Body has not yet met its duty to make a decision on the basis of all relevant considerations.

[para 47] I believe this is another case in which a significant relevant factor has not yet been considered by the Public Body. I have therefore decided to remit the question of disclosure of the records at issue in this case to the Public Body. I ask it to reconsider its decision in view of the following:

- that the withheld decisions have already been placed in the public realm in the sense that the written decisions were read aloud in public; disclosure of the same information is not as invasive of privacy as disclosure of information that has not already been publicly disclosed by the Public Body.

e. Unfair damage to reputation:

[para 48] The Affected Parties argue that they believe that their reputation will be unfairly damaged if the disciplinary decisions were disclosed to the Applicant (section 17(5)(h)). The Affected Parties provided affidavit evidence of the impact the disclosure would have on themselves, their family, and their reputations.

[para 49] In order for section 17(5)(h) of the Act to weigh against the disclosure of the records at issue, the damage to the Affected Parties' reputations must be unfair. The Applicant in this inquiry is seeking written copies of decisions that were made following a hearing before a tribunal in which evidence was presented and tested. If the Affected Parties were found to be in violation and were disciplined, the disclosure of this information may damage their reputations, but not unfairly (see Order F2004-015 at para 100). If, following the hearing, the Affected Parties' were exonerated, I do not believe that there would be any damage to their reputations. Again, I note that the Applicant is seeking the disciplinary decisions, and not untested allegation or investigations.

Therefore, I find that section 17(5)(h) of the Act does not weigh against the disclosure of the records at issue.

f. Unfair exposure to financial harm:

[para 50] The Affected Parties also submit that I must take into consideration if they will be unfairly exposed to harm as a result of the disclosure of the records at issue. The Affected Parties submit, "[t]heir movement to other positions within the Edmonton Police Service may be negatively impacted. This becomes a significant financial issue as certain positions within a given classification have significantly more opportunities for over time, thus creating financial harm."

[para 51] As the financial harm to which the Affected Parties believe that they have been or will be exposed to primarily involves their employment within the EPS, I am not entirely clear on how disclosing this information would expose the Affected Parties to any financial harm further to that to which they have already been exposed. Certainly their employer (the Public Body) was made aware of the outcome of the disciplinary proceedings. Therefore, in the instances where the Affected Party argues that the disclosure will expose him or her to financial harm on this basis alone, I am not persuaded. In any event, harm must be unfair and this argument is premised on unfair treatment by the employer (the Public Body). I have no evidence of this.

[para 52] Some Affected Parties argue that the disclosure may expose them to financial harm in that they may find it difficult to find employment after they leave their employment with the Public Body. This is not a certainty but a possibility and in any event, in order for this factor to weigh against disclosure, the exposure to harm must, again, be unfair (Order 2001-020 at para 37). If, following a hearing of the issues and after evidence was presented and tested, the Affected Party was found to have violated the *Police Act* or related statutes, I do not believe that any financial harm that results would be unfair.

g. Other section 17(5) factors:

[para 53] Finally, the Public Body also argues that the fact that the third parties have not consented to the disclosure of their personal information and that the Applicant has not shown a pressing need for the information at issue weigh against disclosure. While these are not enumerated factors under section 17(5) of the Act, previous orders from this Office have found that they are factors that could be considered under section 17(5) of the Act (see Order F2010-029 at para 131 and Order 2000-023 at para 55).

[para 54] While I agree with the Public Body that these factors weigh against disclosure, I do not believe that they outweigh the fact that the Public Body publicly disclosed the content of the disciplinary decisions.

V. ORDER

[para 55] I make this Order under section 72 of the Act.

[para 56] I order the Public Body to comply with the duty under section 17(5) to consider all relevant circumstances in making the decision to disclose or withhold personal information under section 17, including the relevant circumstances as summarized at paragraph 47.

[para 57] I order the Public Body to notify me and the Applicant in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

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Keri H. Ridley
Adjudicator